

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 6, 2004

IN RE:)	
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	DOCKET NO.
TARIFF TO ESTABLISH WELCOMING REWARDS)	03-00625
PROMOTION - Tariff number 2003-1366)	

ORDER ALLOWING TARIFF TO GO INTO EFFECT

This matter came before Chairman Deborah Taylor Tate, Director Pat Miller, and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at the regularly scheduled Authority Conference held on December 15 and 16, 2003 for consideration of the *Tariff to Establish Welcoming Rewards Promotion, Tariff No. 2003-1366* (the "*Tariff*") submitted by BellSouth Telecommunications, Inc. ("BellSouth")

BACKGROUND

BellSouth submitted the *Tariff* on December 3, 2003 to become effective January 2, 2004 and continue until June 30, 2004. The *Tariff* offers the "Welcoming Rewards Promotion" for new BellSouth subscribers located in Rate Group 5¹. To qualify, new subscribers must: 1) be located in Rate Group 5; 2) have one or more lines per location (for multi-location subscribers, all locations must qualify); 3) have aggregate annual billing of not more than thirty-six thousand dollars (\$36,000.00) at the time of enrollment, and 4) must sign a twelve (12) month term contract. New subscribers who meet these requirements receive a reward in the form of a seventy-five dollar (\$75) credit per new line per location. The *Tariff* provides that the reward will appear as a one-time credit

¹ Rate Group 5 consists of all exchanges located in the metropolitan calling areas of Nashville and Memphis

on the business customer's bill. Additional lines subsequently added by the customer during the *Tariff* period are not eligible for the reward.

On December 8, 2003, the Consumer Advocate and Protection Division of the Attorney General's Office (the "Consumer Advocate") filed a *Complaint and Petition to Intervene* ("*Intervention*") In its *Intervention*, the Consumer Advocate asserts that the "new business customer" classification in the *Tariff* would preclude the resale of the program by competing carriers to a large number of potential customers.² The Consumer Advocate alleged that the *Tariff* is unlawful because restrictions of resale which appear on the face of the *Tariff* are "presumptively unreasonable under federal law, and could constitute a breach of BellSouth's resale duties and obligations."³ The Consumer Advocate also alleged that the *Tariff* is unjustly discriminatory between existing BellSouth customers and new BellSouth customers and is unreasonably discriminatory against competing carriers "because the *Tariff* realistically cannot be resold to a large segment of potential customers"⁴ Finally, the Consumer Advocate alleged that the *Tariff* is anticompetitive.⁵

BellSouth Telecommunications, Inc.'s Response to Complaint and Petition to Intervene Filed by the Consumer Advocate Division ("*Response*") was filed on December 11, 2003. In its *Response*, BellSouth points out that the objections raised in the *Intervention* were previously determined by the Authority in Docket No. 03-00060 in which the TRA first addressed and subsequently approved BellSouth's "Welcoming Reward" program.⁶ BellSouth asserted that revisiting the same objections would be an unreasonable use of the TRA's resources.⁷

² *Complaint and Petition to Intervene*, pp. 2-3 (December 8, 2003) (hereinafter *Intervention*)

³ *Id* at 4

⁴ *Id* at 3-4

⁵ *Id* at 4.

⁶ *BellSouth Telecommunications, Inc.'s Response to Complaint and Petition to Intervene Filed by the Consumer Advocate Division*, p. 1 (December 11, 2003)

⁷ *Id*

The *Tariff* and the *Intervention* were considered at the regularly scheduled Authority conference held on December 15, 2003. Joelle Phillips, Esq. appeared on behalf of BellSouth and Timothy Phillips, Esq. and Joe Shirley, Esq. appeared on behalf of the Consumer Advocate. The Directors heard oral argument from the parties relative to the issues raised in the *Petition* and the *Intervention*. During oral argument the Consumer Advocate noted a difference between the *Tariff* filed in this docket and the tariff in Docket 03-00060 which contained language specifically providing that the tariff, including the reward amount, would be made available for resale.⁸ BellSouth responded that it was BellSouth's intention to allow the *Tariff*, including the reward amount, to be resold in the same manner as the tariff approved in Docket No. 03-00060 and agreed to file that same day a revision to the *Tariff* to include such language.⁹ Based on that representation, the voting panel determined to continue consideration of the *Tariff* and the *Intervention* until the next day, December 16, in order to allow BellSouth to file the revised language.

BellSouth filed a revised tariff page on December 15, 2003, together with a cover letter, explaining that "BellSouth will treat resale of this tariff in precisely the same fashion as it treated resale under the earlier approved tariff."¹⁰ The revised tariff page included the statement that the "Program as well as the \$100 Reward described below is available for resale at the wholesale discount rate for the duration of the enrollment period"¹¹ On December 16, 2003, prior to the continuation of the Authority Conference, BellSouth filed an amended tariff page to reflect that the program reward available under the *Tariff* would be seventy-five dollars (\$75) consistent with the *Tariff* as originally filed in this docket.¹²

⁸ Transcript of Authority Conference, p. 51 (December 15, 2003).

⁹ *Id.* at 52.

¹⁰ *Revised Tariff*, Cover Letter (December 15, 2003)

¹¹ *Revised Tariff*, General Subscriber Services Tariff Original Page 94.18, A13.90.27A4 (December 15, 2003)

¹² *BellSouth's Amended Tariff Page*, General Subscriber Services Tariff Original Page 94.58, A13.90.27A4 (December 16, 2003)

On December 16, 2003 the panel reconvened to continue deliberations regarding the *Tariff* and the *Intervention*. During the Conference, BellSouth explained that the promotion offered by the current *Tariff* would operate in the same manner as the tariff previously approved in Docket No. 03-00060 but that the promotion offered by the current *Tariff* had been reduced from one hundred dollars (\$100) to seventy-five dollars (\$75) and the promotion was expanded to be available to subscribers with one or more lines rather than the previous eligibility requirement of two or more lines.¹³

The Consumer Advocate stated that the *Tariff*, as revised by BellSouth's December 15 and 16 filings, "is materially the same as the tariff that the TRA approved in the prior docket, that is 03-00060."¹⁴ Moreover, the Consumer Advocate acknowledged that "the legal issues in the present docket are essentially the same as those that were presented in the prior case, and that if a case were to be convened in this instance that the Consumer Advocate would be seeking review of essentially the same issues that we sought review on in the prior case."¹⁵

FINDINGS

The promotion offered in the *Tariff* submitted in this docket and the Consumer Advocate's objections to it, are in all material respects identical to the promotion filed and objections raised by the parties in Docket No. 03-00060. The Authority found that in approving the tariff submitted in Docket No. 03-00060, BellSouth's decision to offer a promotion exclusively to new customers was not unjustly discriminatory or otherwise a violation of Tenn. Code Ann. § 65-4-122.¹⁶ The Authority also found that approval of the tariff submitted in Docket No. 03-00060 contained a finding that the one-year term contract requirement and the corresponding termination liability provision contained in the tariff was not anti-competitive and was consistent with previous Authority

¹³ Transcript of Proceedings, p. 74 (December 16, 2003)

¹⁴ *Id.* at 77

¹⁵ *Id.* at 78

¹⁶ *Order Dismissing Petition to Suspend Tariff*, p. 11 (April 14, 2003)

rulings.¹⁷ Given the Authority's findings in Docket No. 03-00060 and resulting approval of the tariff filed therein, the substantial similarity of the *Tariff* submitted for approval in this docket, and the Consumer Advocate's acknowledgement that its objections to the *Tariff* are the same as those raised regarding the tariff in Docket No. 03-00060, a majority of the panel found that the *Intervention* should be denied and the *Tariff* should be allowed to go into effect.

IT IS THEREFORE ORDERED THAT:

1. The *Complaint and Petition to Intervene* filed by the Consumer Advocate and Protection Division of the Office of the Attorney General is denied.
2. BellSouth Telecommunications, Inc.'s *Tariff to Introduce the BellSouth Welcoming Reward Program – Tariff number 2003-1366*, as revised by BellSouth Telecommunications, Inc.'s filings of December 15 and 16, 2003, shall be allowed to go into effect per its stated effective date.


Deborah Taylor Tate, Chairman


Pat Miller, Director

* * *¹⁸

Ron Jones, Director

¹⁷ *Id.*

¹⁸ Director Ron Jones declined to vote with the Majority consistent with his original position in Docket 03-00060 and given the fact that the Court of Appeals had not yet rendered a decision on the appeal of that docket